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Judge Recommends Sacking Ex-NFL Player's ERISA Suit

By **Emily Brill**

Law360 (September 5, 2019, 6:14 PM EDT) -- A federal magistrate judge Thursday recommended spiking a former National Football League safety's lawsuit against the NFL players' union, saying he found no credence to allegations that players weren't properly informed about their retirement benefits.

U.S. Magistrate Judge Robert W. Lehrburger wrote in his report and recommendation that he found no evidence that The Bert Bell/Pete Rozelle NFL Player Retirement Plan's supervisory board and its six members breached their fiduciary duties to plan participants under the Employee Retirement Income Security Act by allegedly failing to disclose enough information about how players could receive disability retirement benefits.

He suggested that U.S. District Judge Gregory H. Woods toss two sets of claims: allegations that the board hid information about plan terms, and allegations that the National Football League Management Council and the National Football League Players Association failed to properly oversee the board. The board didn't breach its fiduciary duty and the council and association can't be held liable for the board's alleged actions, Judge Lehrburger wrote.

Though the council appointed trustees to the board, it wasn't responsible for the board's decisions, the judge wrote.

"The mere ability to appoint or remove trustees to the board of a retirement plan is insufficient to establish broader fiduciary liability for the trustees' substantive decisions," the judge wrote.

He claimed this transfer of liability wouldn't make sense, writing, "if every employer or union that appoints plan trustees were themselves deemed an ERISA fiduciary liable for every alleged act or omission of those trustees, the whole system of multi-employer pension plans would become grossly inefficient."

Judge Lehrburger added that the association wasn't liable for the board's alleged misconduct either, because "the association did not serve as a plan fiduciary for purposes of benefit reclassification decisions."

First filed as a suit by Christopher Hudson, a former safety for the Jacksonville Jaguars, Chicago Bears and Atlanta Falcons, Hudson sought to be reclassified as disabled under the NFL's retirement plan after he began suffering headaches, dizziness, ringing ears and blurred vision two years after leaving the league.

After his application was denied, Hudson sued the council, the association, the board and its members on behalf of himself and similarly situated ex-players, saying the entities and individuals had breached their fiduciary duty under ERISA by failing to warn players of how difficult it was to get disability retirement benefits without a clear diagnosis or a lawyer.

Judge Lehrburger wrote Thursday that the board — the only entity who was properly named as a fiduciary in the suit — wasn't required to warn players about the rigors of qualifying for disability benefits.

"[The lawsuit] alleges that the retirement board should be held liable because the summary plan description failed to properly apprise participants such as Hudson of the standards by which potential requests for reclassification would be evaluated," Judge Lehrburger wrote. "This claim stretches ERISA's requirements beyond their bounds."

The defendants had motioned to dismiss the lawsuit **in August 2018**. Hudson **fought back** in October, saying the NFL players union and other defendants were trying to "rewrite" his allegations.

Counsel for the parties was not immediately available for comment Thursday.

Hudson is represented by Robert I. Harwood and Daniella Quitt of Glancy Prongay & Murray LLP, Robert A. Donati and William B. Ryan of Donati Law PLLC, and R. Joseph Barton of Block & Leviton LLP.

The retirement board of the Bert Bell/Pete Rozelle NFL Player Retirement Plan is represented by Michael L. Junk and Michael J. Prame of the Groom Law Group Chtd., and Brian Laurence Bank and Jacqueline Mecchella Bushwack of Rivkin Radler LLP.

The NFL Management Council is represented by M. Christine Slavik, Stacey R. Eisenstein and Eric D. Field of Akin Gump Strauss Hauer & Feld LLP.

The NFL Players Association is represented by William G. Miossi, Mary M. Lenahan, Paul N. Harold and Jeffrey L. Kessler of Winston & Strawn LLP.

The case is Hudson v. National Football League Management Council et al., case number 1:18-cv-04483, in the U.S. District for the Southern District of New York.

--Additional reporting by Danielle Nichole Smith and Adam Lidgett. Editing by Abbie Sarfo.

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